

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PRO 49 DEVELOPMENT, LLC, a
California limited liability
company,

Plaintiff,

v.

NESS EXPRESS 1, LLC, a Delaware
limited liability company; ADAM
DECKER, an individual; JOSEPH
DECKER, an individual; TOMMY'S
EXPRESS LCC, a Michigan limited
liability company; RYAN ESSENBURG,
an individual; and DOES 1 through
100, inclusive,

Defendants.

No. 2:24-cv-01850-JAM-JDP

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS**

Before the Court is Defendants Tommy's Express LLC and Ryan
Essenburg's (collectively, the "Tommy's Defendants") motion to
dismiss. See Mot., ECF No. 32-1. Pro 49 Development
("Plaintiff") opposes. See Opp'n, ECF No. 35. The Tommy's
Defendants reply. See Reply, ECF No. 38. For the following
reasons, the motion is GRANTED IN PART and DENIED IN PART.¹

¹This motion was determined to be suitable for decision without
oral argument. E.D. Cal. L.R. 230(g). The hearing was
scheduled for February 11, 2025.

I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

Plaintiff originally filed suit in the Superior Court of California, County of Placer. See Notice of Removal, ECF No. 1. Defendants then properly removed the case to federal court under diversity jurisdiction. See id.; see also Order Denying Motion to Remand, ECF No. 25.

This controversy arises out of a lease between Plaintiff and Defendant Ness Express 1 ("Ness") for the establishment of a car wash under the franchise of Defendant Tommy's Express. See Comp. ¶ 1, ECF No. 1. Plaintiff alleges that Ness violated the lease and that named defendants (including Ryan Essenburg) interfered with the lease. See id. Plaintiff brings thirteen causes of action, including breach of contract. See id. at 1. Of those thirteen causes of action, Plaintiff only brings four against the Tommy's Defendants: (1) inducing breach of contract; (2) intentional interference with contractual relations; (3) intentional interference with prospective economic relations; and (4) negligent interference with prospective economic relations. See id. at 23-26. In its Prayer for Relief, Plaintiff seeks punitive damages for these claims. See id. at 32.

The Tommy's Defendants now move to dismiss these four causes of action for failure to state a claim upon which relief can be granted. Mot. at 1-2. They also ask the Court to dismiss Plaintiff's request for punitive damages. See id. at 2. Plaintiff responds that it has sufficiently pled these claims and its request for punitive damages. See Opp'n at 15.

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II. OPINION

A. Legal Standard

A Rule 12(b)(6) motion challenges the sufficiency of a complaint for “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). “To survive a motion to dismiss [under 12(b)(6)], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (internal quotation marks and citation omitted). Plausibility requires “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Id. While “detailed factual allegations” are unnecessary, the complaint must allege more than “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” Id. Conclusory allegations are not to be considered in the plausibility analysis. Id. at 679 (“While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations.”). When a plaintiff fails to “state a claim upon which relief can be granted,” the Court must dismiss the claim. Fed. R. Civ. P. 12(b)(6).

B. Request for Judicial Notice

Under Federal Rule of Evidence 201, a district court may take judicial notice of a fact that is “not subject to reasonable dispute because it can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(2). It is proper for a court to consider evidence subject to judicial notice when deciding a

1 motion to dismiss. Weston Fam. P'ship LLLP v. Twitter, Inc., 29
2 F.4th 611, 617 (9th Cir. 2022).

3 The Tommy's Defendants request that the Court take judicial
4 notice of the lease between Plaintiff and Ness, as well as an
5 email involving Adam Decker. See Request for Judicial Notice,
6 ECF No. 32-2. The Tommy's Defendants state that the email forms
7 the basis of Plaintiff's allegation that they told Ness to
8 abandon the lease. Id. at 2. Plaintiff does not oppose the
9 request. Because the Tommy's Defendants seek judicial notice of
10 documents that are referenced in the complaint, the Court GRANTS
11 this request.

12 C. Analysis

13 1. Inducing Breach of Contract

14 To state a claim for inducing breach of contract, a
15 plaintiff must show: (1) the existence of a valid contract
16 between the plaintiff and a third party; (2) the defendant's
17 knowledge of that contract; (3) the defendant's intentional acts
18 designed to induce a breach or disruption of the contractual
19 relationship; (4) actual breach; and (5) resulting damage. Jenni
20 Rivera Enterprises, LLC v. Latin World Ent. Holdings, Inc., 36
21 Cal. App. 5th 766, 782 (2019) (internal quotation marks and
22 citations omitted).

23 The Tommy's Defendants assert that Plaintiff must show that
24 they "acted in an unjustified manner." See Mot. at 6-8. The
25 Court disagrees. "The defendant's conduct need not be wrongful
26 apart from the interference with the contract. Furthermore, a
27 plaintiff need not establish that the primary purpose of the
28 defendant's actions was to disrupt the contract. The tort is

1 shown even where the actor does not act for the purpose of
2 interfering with the contract or desire it but knows that the
3 interference is certain or substantially certain to occur as a
4 result of his [or her] action.” Jenni Rivera Enterprises, 36
5 Cal. App. 5th at 782 (cleaned up).

6 The Tommy’s Defendants do not contest that that there was a
7 valid contract between Plaintiff and Ness, that they knew about
8 the contract, or that there was resulting damage. As such, the
9 Court addresses the remaining elements, in part by discussing the
10 arguments presented by the Tommy’s Defendants: (a) whether there
11 was an actual breach; (b) whether the contract was at-will and
12 therefore Plaintiff must show an independently wrongful act; and
13 (c) whether Ness and Tommy’s had a privileged relationship that
14 precludes liability for this tort.

15 a. Actual Breach

16 The Tommy’s Defendants argue that Plaintiff cannot show
17 actual breach because Ness did not breach the contract. See Mot.
18 at 6. Instead, the Tommy’s Defendants contend that Ness believed
19 it was acting lawfully “within the termination period under the
20 Lease.” Id.

21 In the Complaint, Plaintiff states that Ness terminated the
22 Lease by citing to a section of the contract that allowed for
23 termination “only in the event the Lessee, in its commercially
24 reasonable discretion, is unsatisfied with its inspections.”
25 Compl. ¶ 48. Plaintiff further alleges that the inspections are
26 specified elsewhere, and that Ness never performed any of the
27 qualifying inspections. Id. ¶¶ 48-49. As such, Plaintiff
28 plausibly states that Ness breached the contract, thus satisfying

1 this element for pleading inducing breach.

2 b. At-Will Contract

3 The Tommy's Defendants argue that the contract was at-will
4 and therefore Plaintiff must plead an independently wrongful act.
5 See Mot. at 7; see also Ixchel Pharma, LLC v. Biogen, Inc., 9
6 Cal. 5th 1130, 1148 (2020) (holding that to state a claim for
7 interference with an at-will contract, a plaintiff must allege
8 that the defendant engaged in an independently wrongful act).
9 The Tommy's Defendants summarily argue that the lease was akin to
10 an at-will contract because "Ness was still in it [sic]
11 termination period." See Mot. at 7. Plaintiff argues that the
12 contract was not at-will. See Opp'n at 7.

13 An at-will contract "may be terminated, by its terms, at the
14 prerogative of a single party, perhaps because that party found a
15 better offer from a competitor. In that event, the other party
16 has no legal claim to the continuation of the relationship."
17 Coast Hematology-Oncology Assocs. Med. Grp., Inc. v. Long Beach
18 Mem'l Med. Ctr., 58 Cal. App. 5th 748, 767 (2020). Here, the
19 lease did not provide that either party could terminate it
20 without justification. Indeed, both parties agree that the lease
21 could be terminated only under specific conditions, which is why
22 the Tommy's Defendants argue that Ness terminated the contract
23 pursuant to a lawful justification. See Mot. at 6. The Tommy's
24 Defendants do not argue that Ness could terminate the contract at
25 its prerogative. Moreover, in the Complaint, Plaintiff alleges
26 that the lease could only be terminated subject to outlined
27 circumstances, which is why Ness stated it was terminating the
28 lease pursuant to a particular subsection. See Compl. ¶¶ 47-57.

1 Accepting Plaintiff's factual allegations as true, the Court
2 finds that the contract was not at-will, and therefore Plaintiff
3 does not need to plead an independently wrongful act.

4 c. Privileged Relationship

5 The Tommy's Defendants' final argument is that they had a
6 privileged relationship with Ness that shields them from
7 liability. They cite a California appellate case where the court
8 held that an international union was not liable for inducing
9 breach of contract that concerned one of its local unions because
10 the international union and local union were "in a confidential
11 relationship" that was "close and interwoven" with the unions
12 "having common objectives and existing under the same system of
13 internal laws and management." Lawless v. Bhd. of Painters,
14 Decorators & Paperhangers of Am., 143 Cal. App. 2d 474, 478
15 (1956). "Multiple courts have cabined Lawless's finding to
16 analogous situations in which the parties have a close or
17 interdependent relationship." whiteCryption Corp. v. Arxan
18 Techs., Inc., No. 15-CV-00754-WHO, 2016 WL 3275944, at *4-5 (N.D.
19 Cal. June 15, 2016) (collecting cases).

20 The Tommy's Defendants argue that they have a privileged
21 relationship with Ness because they "have a legitimate business
22 interest in the performance and success of Ness's franchise."
23 Mot. at 8. But as the California Supreme Court held, the
24 assertion of a financial business interest "is a matter of
25 defense, to be decided by a resolution of the factual issues
26 presumptively involved." Collins v. Vickter Manor, Inc., 47 Cal.
27 2d 875, 883 (1957). Because the Tommy's Defendants' right to
28 this privilege "does not affirmatively appear on the face of the

1 complaint," it would be improper for the Court to find that any
2 such privilege exists at this stage of litigation. See id.

3 Accordingly, because Plaintiff has stated a claim for
4 inducing breach of contract, the Court denies the Tommy's
5 Defendants' motion as to this claim.

6 2. Intentional Interference with Contractual
7 Relations

8 The elements for this tort are substantially similar to
9 those for inducing breach of contract. See Jenni Rivera
10 Enterprises, LLC, 36 Cal. App. 5th at 782. As such, the Tommy's
11 Defendants simply incorporate their arguments made for inducing
12 breach. See Mot. at 9. Because Plaintiff has sufficiently pled
13 the requisite elements and the Tommy's Defendants have no
14 additional arguments, the Court finds that Plaintiff has stated a
15 claim for intentional interference. Tommy's Defendants' motion
16 to dismiss as to this claim is denied.

17 3. Intentional Interference with Prospective Economic
18 Relations

19 To state a claim for intentional interference with
20 prospective economic advantage, a plaintiff must show: "(1) the
21 existence, between the plaintiff and some third party, of an
22 economic relationship that contains the probability of future
23 economic benefit to the plaintiff; (2) the defendant's knowledge
24 of the relationship; (3) intentionally wrongful acts designed to
25 disrupt the relationship; (4) actual disruption of the
26 relationship; and (5) economic harm proximately caused by the
27 defendant's action." Roy Allan Slurry Seal, Inc. v. Am. Asphalt
28 S., Inc., 2 Cal. 5th 505, 512 (2017). Regarding the third

1 element, "an act is independently wrongful if it is unlawful,
2 that is, if it is proscribed by some constitutional, statutory,
3 regulatory, common law, or other determinable legal standard."
4 Korea Supply Co. v. Lockheed Martin Corp., 29 Cal. 4th 1134, 1159
5 (2003).

6 The Tommy's Defendants argue that Plaintiff has not pled an
7 independently unlawful act. See Mot. at 10. Plaintiff counters
8 that the Tommy's Defendants approved the premises for Ness to
9 lease and then later instructed Ness to "cut bait." See Opp'n at
10 11. Plaintiff states that the Tommy's Defendants' conduct
11 constitutes "intentional misrepresentation, concealment, false
12 promise, and negligent misrepresentation." See id. But none of
13 these allegations are in the Complaint. In fact, this cause of
14 action contains no mention of unlawful conduct on the part of the
15 Tommy's Defendants. See Compl. at 25.

16 Because Plaintiff has failed to plead that the Tommy's
17 Defendants engaged in an independently unlawful act, it has
18 failed to state a claim for this tort. Accordingly, the Court
19 grants the Tommy's Defendants' motion as to this claim.

20 4. Negligent Interference with Prospective Economic
21 Relations

22 "A plaintiff alleging a claim for intentional or negligent
23 interference with prospective economic advantage has the burden
24 to plead and prove as an element not only that the defendant
25 interfered with an economic relationship, but also that the
26 defendant's interference was wrongful by some measure beyond the
27 fact of the interference itself." Id. at 1006 (internal
28 quotation marks and citations omitted). As mentioned above, "an

1 act is independently wrongful if it is unlawful, that is, if it
2 is proscribed by some constitutional, statutory, regulatory,
3 common law, or other determinable legal standard.” Korea Supply
4 Co., 29 Cal. 4th at 1159.

5 Like its claim for intentional interference with prospective
6 economic relations, Plaintiff fails to plead that the Tommy’s
7 Defendants engaged in independently unlawful conduct for this
8 cause of action. See Compl. at 26. As the Tommy’s Defendants
9 argue, this reason alone warrants dismissal. See Mot. at 12.
10 The Court agrees and grants the Tommy’s Defendants’ motion as to
11 this claim.

12 5. Punitive Damages

13 The Tommy’s Defendants ask the Court to dismiss Plaintiff’s
14 request for punitive damages because they have not met the
15 pleading requirement under California law. See Mot. at 13-14.
16 But, as Plaintiff points out, the federal pleading standard is
17 more lenient. See Opp’n at 14. “Although Section 3294 provides
18 the governing substantive law for punitive damages, California’s
19 heightened pleading standard irreconcilably conflicts with Rules
20 8 and 9 of the Federal Rules of Civil Procedure—the provisions
21 governing the adequacy of pleadings in federal court.” Clark v.
22 Allstate Ins. Co., 106 F. Supp. 2d 1016, 1018 (S.D. Cal. 2000).
23 Under the Federal Rule, “malice, intent, knowledge, and other
24 conditions of a person’s mind may be alleged generally.” Fed. R.
25 Civ. P. 9. Indeed, the Ninth Circuit has held that a plaintiff
26 need not plead “any particularity in connection with an averment
27 of intent, knowledge or condition of the mind.” In re GlenFed
28 Sec. Litig., 42 F.3d 1541, 1545 (9th Cir. 1994) (en banc),

1 superseded by statute on other grounds as stated in SEC v. Todd,
2 642 F.3d 1207, 1216 (9th Cir. 2011). Accordingly, "in federal
3 court, a plaintiff may include a 'short and plain' prayer for
4 punitive damages that relies entirely on unsupported and
5 conclusory averments of malice or fraudulent intent." Clark, 106
6 F. Supp. 2d at 1019.

7 Plaintiff has pled several claims for which it may be
8 entitled to punitive damages if the elements of Section 3294 are
9 met. In the Complaint, Plaintiff alleges that the Tommy's
10 Defendants' actions constituted "oppression, fraud and malice
11 within the definition of Civil Code 3294." See Compl. ¶¶ 122,
12 130, 139, 149. Even if these allegations are conclusory and
13 unsupported, they are sufficient to survive a motion to dismiss
14 in federal court. Accord Rees v. PNC Bank, N.A., 308 F.R.D. 266,
15 274 (N.D. Cal. 2015).

16 D. Meet and Confer

17 Before counsel files a motion, they must first contact
18 opposing counsel to discuss thoroughly the contents of the
19 motion. See Order, ECF No. 6-2. For a motion to dismiss, this
20 conference must take place five (5) days before the last day of
21 filing.

22 The Tommy's Defendants filed the present motion on the last
23 day of filing, November 20, 2024. See Notice of Motion, ECF No.
24 32. They state they conferred with opposing counsel on November
25 18, 2024—two days before the filing deadline. See id. Because
26 the meet and confer should have taken place no later than
27 November 15, 2024, Plaintiff asks that the Court deny the
28 present motion. See Opp'n at 14-15. Plaintiff's request is

1 denied. As the Tommy's Defendants point out, there was no
2 prejudice from the delayed meet and confer, and they satisfied
3 the spirit of the requirement. See Reply at 5.

4 E. Leave to Amend

5 A court granting a motion to dismiss a claim must then
6 decide whether to grant leave to amend. Leave to amend should
7 be "freely given" where there is no "undue delay, bad faith or
8 dilatory motive on the part of the movant, . . . undue prejudice
9 to the opposing party by virtue of allowance of the amendment,
10 [or] futility of [the] amendment" Foman v. Davis, 371
11 U.S. 178, 182 (1962).

12 Upon stipulation of the parties, the Court already ordered
13 that Plaintiff may file a First Amended Complaint ("FAC"), and
14 that it may amend its complaint to the extent permitted by this
15 Order regarding the Tommy's Defendants' motion to dismiss. See
16 Stipulation and Order, ECF No. 39. Because granting leave to
17 amend the claims dismissed will not result in any delay or
18 prejudice, and because there are facts that Plaintiff claims it
19 could plead to support these claims, the Court grants Plaintiff
20 leave to amend its claims for intentional and negligent
21 interference with prospective economic relations.


22 III. ORDER

23 For the reasons set forth above, the Tommy's Defendants'
24 motion to dismiss is GRANTED IN PART and DENIED IN PART.
25 Specifically, the Court GRANTS the motion with leave to amend as
26 to the claims for intentional and negligent interference with
27 prospective economic relations, and DENIES the motion as to the
28 remaining claims. As previously ordered, Plaintiff shall file

1 its FAC within twenty-one (21) days. See Stipulation and Order.
2 Tommy's Defendants shall file their response to the FAC within
3 twenty-one (21) days thereafter.

4 IT IS SO ORDERED.

5 Dated: February 6, 2025

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JOHN A. MENDEZ
SENIOR UNITED STATES DISTRICT JUDGE